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In re Application of TAUFENBACH :
U.S. Application No.: 09/831,698 :
Int. Application No.: PCT/DE99/03570 :
Int. Filing Date: 09 November 1999 :
Priority Date: 13 November 1998 :
Attorney Docket No.: 6056-000040 :
For: CO₂ SLAB LASER :

DECISION

This is in response to applicant's "Request for Withdrawal of Abandonment" filed 25 February 2002.

BACKGROUND

On 09 November 1999, applicant filed international application PCT/DE99/03570, which claimed priority of an earlier Germany application filed 13 November 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 25 May 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 05 June 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 14 May 2001 (13 May 2001 was a Sunday).

On 11 May 2001, applicant filed a Transmittal Letter concerning a filing under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US). The submission did not include the requisite basic national fee.

On 15 June 2001, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the present application is abandoned as to the United States for failure to pay the basic national fee.

On 22 June 2001, applicant filed a petition under 37 CFR 1.137(b).

On 02 November 2001, this Office mailed a decision granting the 22 June 2001 petition.

On 05 November 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371, which indicated that a translation of the international application into English and an oath or declaration in compliance with 37 CFR 1.497 must be submitted.

On 08 January 2002, applicant filed a response to the Notification of Missing Requirements. The response included a purported translation of the international application into English and a copy of an executed declaration allegedly filed on 15 August 2001.

On 28 January 2002, the DO/EO/US mailed a Notification of Abandonment, which indicated that the present application is abandoned for failure to pay the full basic national fee.

On 25 February 2002, applicant filed the present request to have the holding of abandonment withdrawn.

DISCUSSION

The petition under 37 CFR 1.137(b) filed 22 June 2001 states that it is accompanied by a fee of \$355.00 for the basic national fee. However, because the European Patent Office was the International Searching Authority, the requisite basic national fee was \$430.00 under 37 CFR 1.492(a)(5). The petition under 37 CFR 1.137(b) was not accompanied by authorization to charge additional required fees under 37 CFR 1.492.

The copy of the declaration filed with the 08 January 2002 response included a cover letter which authorizes the USPTO to charge any fees that may be required to Deposit Account No. 08-0750. Applicant has submitted a copy of a return postcard which lists a declaration in its itemized contents and bears a USPTO date stamp of 15 August 2001. This serves as *prima facie* evidence that the authorization to charge fees was provided on 15 August 2001, and thus the \$75.00 deficiency in the basic national fee would have been cured as of that date.

CONCLUSION

For the reasons above, the present request is GRANTED.

The Notification of Abandonment mailed 28 January 2002 is hereby VACATED.

Applicant must file a proper response within TWO (2) MONTHS from the mail date of this decision, including a proper translation of the international application into English.¹

¹ The purported translation filed 08 January 2002 is defective. For example, the published international application contains twelve claims, whereas the purported translation contains thirteen claims. The translation must not include any additions or deletions.

Extensions of time are available up to the limit set forth in the Notification of Missing Requirements mailed 05 November 2001.

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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